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## Letter dated 26 February 2016 from the Permanent Representative of Swaziland to the United Nations addressed to the President of the Security Council

I have the honour to make reference to the letter dated 26 February 2016 (S/2016/193), by which the Secretary-General nominated Serge Brammertz of Belgium for appointment by the Security Council as Prosecutor of the International Residual Mechanism for Criminal Tribunals (the Mechanism).

In this regard, the Secretary-General suggested in the said letter that the Security Council consider appointing the Prosecutor for a term of office beginning on 1 March 2016 and ending on 30 June 2018.

I wish to recall that the position of Prosecutor of the Mechanism was held by Hassan Bubacar Jallow of Gambia since his appointment on 1 March 2012 from the International Criminal Tribunal for Rwanda (ICTR).

Bearing in mind the intention of the Secretary-General, reaffirmed in his letter of 23 February 2016, to reappoint Judge Theodor Meron of the United States as President of the Mechanism, and the position held by John Hocking of Australia as Registrar of the International Tribunal for the Former Yugoslavia (ICTY) since 15 May 2009 and Registrar of the Mechanism since 18 January 2012, the Group of African States would like to denounce this clear attempt to exclude Africa from the leadership of the Mechanism.

It is particularly regrettable that this exclusion constitutes a clear violation of the principle of equitable geographical distribution, as enshrined in article 10 (c) of the statute of the Mechanism, which indicates that the Security Council shall take due account of the "adequate representation of the principle legal systems of the world".

Mindful of being reappointed on the basis of the foregoing, Prosecutor Jallow has already set up his teams to handle the appeals cases expected to come to the Mechanism from ICTY. In that respect, all the staff have been recruited, mainly from ICTY and ICTR, to handle the appeals as they have been doing with pre-appeal litigation.

For those who evoke the principle of continuity, I would like to recall that Mr. Brammertz did not start the cases at trial. There were other Prosecutors before him, and he took over from them midway into many of the cases.

ICTR still has three fugitives who will be put on trial at the Mechanism when arrested. In anticipation of the trial of the three fugitives, preparations have been put in place at the relevant branch of the Mechanism.

The nomination of Mr. Brammertz as Prosecutor of the Mechanism cannot be justified on the basis of saving costs through double-hatting, because the President of the Mechanism is in the same situation as Prosecutor Jallow. It is of utmost importance that the same principle apply to both of them to avoid a double standard.

Africa has always been in the forefront of the fight against impunity, particularly in the establishment of this Mechanism that encompasses the International Tribunals for Rwanda and the Former Yugoslavia.

Thus, in recognition of the proven qualifications of Mr. Jallow, his high moral character, impartiality and integrity, the Group of African States invites the members of the Security Council to consider giving due respect to the principle of equitable geographical distribution by reappointing Hassan Bubacar Jallow of Gambia as Prosecutor of the Mechanism.

I would be grateful if you could circulate the present letter as a document of the Security Council.

(*Signed*) Zwelethu **Mnisi**
Ambassador
Permanent Representative of the
Kingdom of the Swaziland to the United Nations
Chairperson of the African Group for the month of February 2016